

## **REMARKS**

### **Claim Rejections**

Claim 10 is rejected under 35 U.S.C. § 102(b) as being anticipated by Johnson (U.S. 509,129). Claims 10-12 are rejected under § 103(a) as being unpatentable over Johnson in view of Cook (U.S. 1,125,067). Claims 10 and 13-15 are rejected under § 103(a) as being unpatentable over Moorman (U.S. 6,047,441) in view of Johnson. Claim 19 is rejected under § 103(a) as being unpatentable over the same references as applied to claims 10 and 13-15, and further in view of Rampolla et al. (U.S. 5,062,189). Claims 16-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

It is noted that the reference to Johnson was initially cited by the Examiner in the outstanding Final Office Action. Thus, this Amendment represents Applicant's initial opportunity to respond to the rejections based upon this reference.

### **Claim Amendments**

By this Amendment, Applicant has amended claim 10 of this application. It is believed that the amended claims specifically set forth each element of Applicant's invention in full compliance with 35 U.S.C. § 112, and define subject matter that is patentably distinguishable over the cited prior art, taken individually or in combination.

The primary reference to Johnson teaches a clamping mechanism including a grooved shells (2, 3) connected together by hooks (4, 5), and wedges (8). The grooved shells are taught to have a uniform thickness. Applicant respectfully notes that Johnson does not teach or suggest that the grooved shell could have a crescent shaped cross section. Modifying the grooves shells, as suggested by the Examiner, would render the invention of Johnson inoperable.

Johnson does not teach a primary plate having a crescent shaped cross section with interior and exterior surfaces; a follower plate having a crescent shaped cross section with interior and exterior surfaces; each crescent shaped cross section of the primary plate and the follower plate has concave and convex edges

terminating in points at opposing ends thereof; a handle plate connected to a lateral edge of one of the primary plate and the follower plate; nor does Johnson teach a plate connected to a center of the exterior surface of one of the primary plate and the follower plate.

It is axiomatic in U.S. patent law that, in order for a reference to anticipate a claimed structure, it must clearly disclose each and every feature of the claimed structure. Applicant submits that it is abundantly clear, as discussed above, that Johnson do not disclose each and every feature of Applicant's amended claims and, therefore, could not possibly anticipate these claims under 35 U.S.C. § 102. Absent a specific showing of these features, Johnson cannot be said to anticipate any of Applicant's amended claims under 35 U.S.C. § 102.

The secondary reference to Cook discloses a coupling including a circular locking member (17) with an eccentric opening (18) and an extension (19), and is cited for teaching the extension (19). However, the extension is connected to the locking member that has a circular shape.

Cook does not teach a primary plate having a crescent shaped cross section with interior and exterior surfaces; a follower plate having a crescent shaped cross section with interior and exterior surfaces; each crescent shaped cross section of the primary plate and the follower plate has concave and convex edges terminating in points at opposing ends thereof; a handle plate connected to a lateral edge of one of the primary plate and the follower plate; nor does Cook teach a plate connected to a center of the exterior surface of one of the primary plate and the follower plate.

The second primary reference to Moorman discloses a flexible sheet reinforcement apparatus including a first conical shaped member (12) with a first connector (30) and a second conical shaped member (14) with a second connector (50).

Moorman does not teach a primary plate having a crescent shaped cross section with interior and exterior surfaces; a follower plate having a crescent shaped cross section with interior and exterior surfaces; each crescent shaped cross section of the primary plate and the follower plate has concave and convex edges terminating in points at opposing ends thereof; a handle plate connected to a lateral edge of one of the primary plate and the follower plate; nor does Moorman teach a

plate connected to a center of the exterior surface of one of the primary plate and the follower plate.

The secondary reference to Rampolla et al. discloses a quick-sealing design for radiological containment including containment fabric (32) connected by an adhesive layer (42), hook (34) and pile (36) connector, or a combination thereof.

Rampolla et al. do not teach a primary plate having a crescent shaped cross section with interior and exterior surfaces; a follower plate having a crescent shaped cross section with interior and exterior surfaces; each crescent shaped cross section of the primary plate and the follower plate has concave and convex edges terminating in points at opposing ends thereof; a handle plate connected to a lateral edge of one of the primary plate and the follower plate; nor do Rampolla et al. teach a plate connected to a center of the exterior surface of one of the primary plate and the follower plate.

Even if the teachings of Johnson, Cook, Moorman, and Rampolla et al. were combined, as suggested by the Examiner, the resultant combination does not suggest: a primary plate having a crescent shaped cross section with interior and exterior surfaces; a follower plate having a crescent shaped cross section with interior and exterior surfaces; each crescent shaped cross section of the primary plate and the follower plate has concave and convex edges terminating in points at opposing ends thereof; a handle plate connected to a lateral edge of one of the primary plate and the follower plate; nor does the combination suggest a plate connected to a center of the exterior surface of one of the primary plate and the follower plate.

It is a basic principle of U.S. patent law that it is improper to arbitrarily pick and choose prior art patents and combine selected portions of the selected patents on the basis of Applicant's disclosure to create a hypothetical combination which allegedly renders a claim obvious, unless there is some direction in the selected prior art patents to combine the selected teachings in a manner so as to negate the patentability of the claimed subject matter. This principle was enunciated over 40 years ago by the Court of Customs and Patent Appeals in In re Rothermel and Waddell, 125 USPQ 328 (CCPA 1960) wherein the court stated, at page 331:

The examiner and the board in rejecting the appealed claims did so by what appears to us to be a piecemeal reconstruction of the prior art patents in the light of appellants' disclosure. ... It is easy now to attribute to this prior art the knowledge which was first made available by appellants and then to assume that it would have been obvious to one having the ordinary skill in the art to make these suggested reconstructions. While such a reconstruction of the art may be an alluring way to rationalize a rejection of the claims, it is not the type of rejection which the statute authorizes.

The same conclusion was later reached by the Court of Appeals for the Federal Circuit in Orthopedic Equipment Company Inc. v. United States, 217 USPQ 193 (Fed.Cir. 1983). In that decision, the court stated, at page 199:

As has been previously explained, the available art shows each of the elements of the claims in suit. Armed with this information, would it then be non-obvious to this person of ordinary skill in the art to coordinate these elements in the same manner as the claims in suit? The difficulty which attaches to all honest attempts to answer this question can be attributed to the strong temptation to rely on hindsight while undertaking this evaluation. It is wrong to use the patent in suit as a guide through the maze of prior art references, combining the right references in the right way so as to achieve the result of the claims in suit. Monday morning quarterbacking is quite improper when resolving the question of non-obviousness in a court of law.

In In re Geiger, 2 USPQ2d, 1276 (Fed.Cir. 1987) the court stated, at page 1278:

We agree with appellant that the PTO has failed to establish a *prima facie* case of obviousness. Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching suggestion or incentive supporting the combination.

Applicant submits that there is not the slightest suggestion in either Johnson, Cook, Moorman, or Rampolla et al. that their respective teachings may be combined as suggested by the Examiner. Case law is clear that, absent any such teaching or suggestion in the prior art, such a combination cannot be made under 35 U.S.C. § 103.

Neither Johnson, Cook, Moorman, nor Rampolla et al. disclose, or suggest a modification of their specifically disclosed structures that would lead one having ordinary skill in the art to arrive at Applicant's claimed structure. Applicant hereby respectfully submits that no combination of the cited prior art renders obvious Applicant's amended claims.

### **Summary**

In view of the foregoing, Applicant submits that this application is now in condition for allowance and such action is respectfully requested. Should the Examiner not be of the opinion that this case is in condition for allowance, it is requested that this amendment be entered for the purposes of appeal, since it represents Applicant's initial opportunity to respond to the rejections based upon Johnson.

It is not believed that the foregoing amendments to claim 10 require any further searching and/or consideration on the part of the Examiner, since such amendment merely includes language defining the crescent shaped cross section. Thus, the Examiner would have inherently searched this subject matter during the previous consideration of claim 10.


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Should any points remain in issue, which the Examiner feels could best be resolved by either a personal or a telephone interview, it is urged that Applicant's local attorney be contacted at the exchange listed below.

Respectfully submitted,

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By:

  
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Bruce H. Troxell  
Reg. No. 26,592

TROXELL LAW OFFICE PLLC  
5205 Leesburg Pike, Suite 1404  
Falls Church, Virginia 22041  
Telephone: 703 575-2711  
Telefax: 703 575-2707